

Effective 5/12/2015

31A-28-213 Miscellaneous provisions.

- (1)
 - (a) Any person who has a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy, other than a policy of an insolvent insurer that is also a covered claim, is required to first exhaust that person's right under that person's policy.
 - (b) Any amount payable on a covered claim under this part under an insurance policy is reduced by the amount of any recovery under the insurance policy described in Subsection (1)(a).
 - (c)
 - (i) Except as provided in Subsection (1)(c)(ii) a person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall first seek recovery from the association of the place of residence of the insured.
 - (ii) If the person's claim is:
 - (A) a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property; and
 - (B) a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant.
 - (iii) Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.
- (2) An insurer may not exercise any right of subrogation against an insolvent insurer's insured if exercise of the right would require the insured, or a guaranty fund under this chapter, to pay an amount the insolvent insurer is obligated to pay under an insurance policy issued to the insured, except that an insurer may exercise a right of subrogation for the amount the subrogation claim exceeds the guaranty association obligation limitations.
- (3) This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.
- (4)
 - (a) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out the association's powers and duties under Section 31A-28-207. Records of these negotiations or meetings shall be made public only upon:
 - (i) the termination of a liquidation, rehabilitation, or conservation proceeding involving the insolvent insurer;
 - (ii) the termination of the insolvency of the insurer; or
 - (iii) the order of a court of competent jurisdiction.
 - (b) This Subsection (4) does not limit the duty of the association to render a report of its activities under Section 31A-28-214.
- (5) For the purpose of carrying out its obligations under this part, the association is considered to be a creditor of the insolvent insurer, except to the extent of any amounts the association is entitled as subrogee under Section 31A-28-207.
- (6)
 - (a) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including:
 - (i) the association;
 - (ii) the shareholders;
 - (iii) the policyowners of the insolvent insurer; and

- (iv) any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer.
- (b) In making the determination described in Subsection (6)(a), the court shall consider the welfare of the policyholders of the continuing or successor insurer.
- (c) A distribution to stockholders, if any, of an insolvent insurer may not be made until the total amount of valid claims of the association with interest on those claims for funds expended in carrying out its powers and duties under Section 31A-28-207 regarding this insurer have been fully recovered by the association.
- (7) A rehabilitator, liquidator, or conservator appointed under any section of this part may recover on behalf of the insurer for excessive distributions paid to affiliates, pursuant to Section 31A-27a-502.

Amended by Chapter 244, 2015 General Session